

FAIR DEBT COLLECTION



Prepared by



OFFUTT AFB LEGAL OFFICE

INTRODUCTION

If you use credit cards, have a loan, or are paying off a mortgage, you are a “debtor.” You may never come into contact with a debt collector, but if you do, the law can ensure you are treated fairly. In 1977, Congress passed the Fair Debt Collection Practices Act to prohibit “debt collectors” from attempting to collect debts in certain ways. However, it does not however, eliminate legitimate debts.

WHAT DEBTS ARE COVERED?

The Act covers personal, family and household debts. For example, this can include money borrowed for a car, home, education, medical care, or charge accounts.

WHO IS A DEBT COLLECTOR?

A “debt collector” is any person other than a “creditor” (the original person you owe money to) who regularly collects debts owed to others. For example, if you default on your loan from a bank, the Act does not apply to the efforts of the bank to collect the debt. However, if the bank hires a debt collection agency to pursue the debt for it, the Act applies to the efforts of the debt collection agency.

HOW MAY A COLLECTOR CONTACT YOU?

A debt collector can contact you in person, by telephone, mail, telegram or fax, but not at an inconvenient time (before 8 a.m. or after 9 p.m.) unless you agree. A debt collector may not contact you at work if he knows that your employer does not approve. You must tell the collector if that is the case. If you want the collector to stop contacting you entirely, you must send a letter to the agent or agency and tell them to stop. Once your letter is received, the debt collector may not contact you again except

to (1) state there will be no further contact, or (2) notify you that the debt collector or the creditor intends to take some specific action (such as filing a lawsuit). This letter will merely stop the debt collector from contacting you; it will not cancel the legitimate debt you owe.

COLLECTORS CONTACTING YOUR FAMILY

If you are represented by a civilian attorney, the debt collector may only contact your attorney. If you are not represented by a civilian attorney, a debt collector may contact your family or friends (usually not more than once) to ascertain your address, your phone number, or your place of employment. Usually, the debt collector may not tell anyone that you owe money, other than you or your civilian attorney.

WHAT THE COLLECTOR MUST TELL YOU

The collector must send you, within 5 days of contact, a written notice telling you: (1) the amount of money you owe, (2) to what creditor, and (3) what to do if you believe you do not owe the debt. If you send a reply that you do not owe the debt within 30 days after you receive notice from the debt collector, the collector may not contact you again, unless they first send you proof of the debt, such as a copy of your bill.

PROHIBITED COLLECTION PRACTICES

Harassment, oppression, and abuse are prohibited. Prohibited practices include:

- (1) Threats of harm to the person, property, or reputation of a person;
- (2) Publication of a list of persons who refuse to pay (except to a credit bureau);
- (3) Use of obscene or profane language;

- (4) Repeated telephone calls to harass;
- (5) Telephoning people without giving proper identification as a debt collector; and
- (6) Advertising the debt.

In addition, collectors cannot use false statements to collect a debt. For example, debt collectors may not:

- (1) Falsely imply that they are an attorney or government representative;
- (2) Falsely imply you have committed a crime;
- (3) Falsely imply that they work for a credit bureau;
- (4) Misrepresent the amount of the debt; or
- (5) Misrepresent the legal nature of forms sent to you.

Furthermore, debt collectors may not:

- (1) State that you will be arrested for failure to pay;
- (2) State that they will seize, garnish, attach, or sell your property or wages unless they legally intend to do so;
- (3) State that actions (such as a lawsuit) will be taken against you unless the action **can be** legally taken, **and** the collector **intends** to take such action;
- (4) Give false credit information about you to anyone (including a credit bureau);
- (5) Use a false name; or
- (6) Use symbols or words indicating “debt collection” on postal correspondence.

WHAT CAN I DO IF I BELIEVE A DEBT COLLECTOR HAS BROKEN THE LAW?

You have the right to sue a debt collector in state or federal court within one year from the date of the violation. If you win, you can recover actual money damages and possibly court costs and attorney fees.

Discuss with your attorney the possibility of acquiring a pro bono attorney, filing a complaint with the FTC and your state Attorney General, and Small Claims Court.

**The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.*

Resources:

1. 15 USC 1692(a)-(k):
<http://www.law.cornell.edu/uscode/text/15/1692c>
2. Federal Trade Commission (FTC):
<http://www.ftc.gov>; 1-877-382-4357
 - <http://ftc.gov/bcp/edu/microsites/moneymatters/dealing-with-debt-collection.shtml>;
 - <http://ftc.gov/bcp/edu/microsites/moneymatters/dealing-with-debt-relief-services.shtml>
 - FTC file a complaint:
<https://www.ftccomplaintassistant.gov/>